

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LOUIE GARCIA,

Plaintiff,

-against-

THE CITY OF NEW YORK, DET. "JOHN" BOYD, P.O.  
"JOHN" RIVERA, DET. "JOHN" DALIZ, P.O. "JOHN"  
PEREZ, SGT. "JOHN" GOOGIN, DET. SAM  
CARASQUILLO, and P.O.s JOHN and JANE DOE #1-10,  
individually and in their official capacities, (the names  
John and Jane Doe being fictitious, as the true names are  
presently unknown),

Defendants.

**ANSWER TO COMPLAINT  
ON BEHALF DEFENDANTS  
BOYD AND PEREZ**

07 CV 9786 (DAB)(RLE)

Jury Trial Demanded

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Defendants, Detective Boyd and Police Officer Rivera<sup>1</sup>, by their attorney,  
Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the  
complaint, respectfully alleges, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except  
admit that plaintiff purports to bring this action as stated therein and seeks the relief as stated  
therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except  
admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except  
admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.

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<sup>1</sup> The City of New York previously filed an answer to the complaint on January 28, 2008 and  
Detective Rivera, Detective Daliz, Sergeant Googin and Detective Carasquillo filed an answer to  
the complaint on June 10, 2008.

4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purports to base venue as stated therein.

5. Paragraph "5" of the complaint sets forth a jury demand to which no response is required.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint.

7. Deny the allegations set forth in paragraph "7" of the complaint, except admit that the City of New York is a municipal corporation.

8. Deny the allegations set forth in paragraph "8" of the complaint, except admit that the City of New York maintains a police department.

9. Deny the allegations set forth in paragraph "9" of the complaint, except admit that Det. Boyd, P.O. Rivera, Det. Daliz, Sgt. Googin, Det. Carasquillo and P.O. Perez were employed the Police Department of the City of New York on August 5, 2006.

10. The allegations set forth in paragraph "10" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

11. The allegations set forth in paragraph "11" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

12. The allegations set forth in paragraph "12" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the complaint, except admit that on or about August 5, 2006 the plaintiff was in a vehicle in the vicinity of 158<sup>th</sup> Street and Edgecomb Avenue in the County, City and State of New York.

14. Deny the allegations set forth in paragraph "14" of the complaint..

15. Deny the allegations set forth in paragraph "15" of the complaint.

16. Deny the allegations set forth in paragraph "16" of the complaint, except admit that plaintiff's vehicle struck other vehicles.

17. Deny the allegations set forth in paragraph "17" of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's alleged injuries.

18. Deny the allegations set forth in paragraph "18" of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's alleged injuries.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. In response to the allegations set forth in paragraph "20" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

21. The allegations set forth in paragraph "21" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. The allegations set forth in paragraph "23" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

24. Deny the allegations set forth in paragraph "24" of the complaint.

25. Deny the allegations set forth in paragraph "25" of the complaint.

26. In response to the allegations set forth in paragraph "26" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

27. Deny the allegations set forth in paragraph "27" of the complaint.

28. Deny the allegations set forth in paragraph "28" of the complaint.

29. In response to the allegations set forth in paragraph "29" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

30. States that the allegations set forth in paragraph "30" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

31. Deny the allegations set forth in paragraph "31" of the complaint.

32. Deny the allegations set forth in paragraph "32" of the complaint.

33. In response to the allegations set forth in paragraph "33" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

34. Deny the allegations set forth in paragraph "34" of the complaint.

35. Deny the allegations set forth in paragraph "35" of the complaint.

36. Deny the allegations set forth in paragraph "36" of the complaint.

37. Deny the allegations set forth in paragraph "37" of the complaint.

38. Deny the allegations set forth in paragraph "38" of the complaint.

39. Deny the allegations set forth in paragraph "39" of the complaint.

40. Deny the allegations set forth in paragraph "40" of the complaint.

41. Deny the allegations set forth in paragraph "41" of the complaint.

42. Deny the allegations set forth in paragraph "42" of the complaint.

43. Deny the allegations set forth in paragraph "43" of the complaint.

44. In response to the allegations set forth in paragraph "44" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

45. Deny the allegations set forth in paragraph "45" of the complaint, except admit that a document purporting to be a Notice of Claim was received by the Office of the Comptroller on or about August 28, 2006.

46. Deny the allegations set forth in paragraph "46" of the complaint, except admit that no settlement has been reached.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "47" of the complaint.

48. Deny the allegations set forth in paragraph "48" of the complaint, except admit that this action was commenced on or about November 5, 2007.

49. Deny the allegations set forth in paragraph "49" of the complaint.

50. Deny the allegations set forth in paragraph "50" of the complaint.

51. In response to the allegations set forth in paragraph "51" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

52. Deny the allegations set forth in paragraph "52" of the complaint.

53. Deny the allegations set forth in paragraph "53" of the complaint, except admit that.

54. In response to the allegations set forth in paragraph "54" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

55. Deny the allegations set forth in paragraph "55" of the complaint.

56. Deny the allegations set forth in paragraph "56" of the complaint.

57. Deny the allegations set forth in paragraph "57" of the complaint.

58. In response to the allegations set forth in paragraph "58" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

59. Deny the allegations set forth in paragraph "59" of the complaint.

60. The allegations set forth in paragraph "60" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

61. The allegations set forth in paragraph "61" of the complaint constitute conclusions of law rather than averments of fact, and accordingly, no response is required.

62. Deny the allegations set forth in paragraph "62" of the complaint.

63. Deny the allegations set forth in paragraph "63" of the complaint.

64. In response to the allegations set forth in paragraph "64" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

65. Deny the allegations set forth in paragraph "65" of the complaint.

66. Deny the allegations set forth in paragraph "66" of the complaint.

67. In response to the allegations set forth in paragraph "67" of the complaint, defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

68. Deny the allegations set forth in paragraph "68" of the complaint.

69. Deny the allegations set forth in paragraph "69" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

70. The plaintiff fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

71. Defendants Boyd and Perez have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

72. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the conduct of intervening third parties and was not the proximate result of any act of the Defendant City of New York.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

73. At all times relevant to the acts alleged in the complaint, Defendant City of New York and its agents and officials acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant City of New York is entitled to governmental immunity from liability.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

74. Punitive damages cannot be recovered from Defendant City of New York.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE:**

75. Plaintiff's claims may be barred in whole or in part by the applicable limitations period.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE:**

76. Plaintiff may not have complied with the conditions precedent to suit.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:**

77. Plaintiff's claims may be barred in whole or in part by the doctrines of *res judicata* and/or collateral estoppel.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

78. To the extent applicable, there was reasonable suspicion to stop and detain plaintiff.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE:**

79. There was probable cause for plaintiff's arrest and prosecution.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**


80. Defendants Boyd and Perez have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.



**WHEREFORE**, Defendants Boyd and Perez request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 23, 2008

MICHAEL A. CARDOZO  
Corporation Counsel  
of the City of New York  
Attorney for Defendant City of New York,  
Rivera, Daliz, Googin, Carasquillo, Boyd  
and Perez  
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New York, New York 10007  
(212) 788-6405

By:   
Meghan A. Cavalieri (MC 6758)  
Assistant Corporation Counsel  
Special Federal Litigation Division

TO: Via ECF  
Rose M. Weber, Esq.  
Rose M. Weber Law Office  
Attorney for Plaintiff  
25 Broadway, Suite 1608  
New York, NY 10007

07 CV 9786 (DAB)(RLE)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LOUIE GARCIA,

Plaintiff,

-against-

THE CITY OF NEW YORK, DET. "JOHN" BOYD,  
P.O. "JOHN" RIVERA, DET. "JOHN" DALIZ, P.O.  
"JOHN" PEREZ, SGT. "JOHN" GOOGIN, DET. SAM  
CARASQUILLO, and P.O.s JOHN and JANE DOE #1-  
10, individually and in their official capacities, (the  
names John and Jane Doe being fictitious, as the true  
names are presently unknown),

Defendants.

**ANSWER TO COMPLAINT ON BEHALF OF  
DETECTIVE BOYD AND POLICE OFFICER  
PEREZ**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York  
Attorney for Defendants The City of New York, Boyd,  
Rivera, Daliz, Perez, Goggin and Carasquillo  
100 Church Street  
New York, New York 10007*

*Of Counsel: Meghan A. Cavalieri  
Tel: (212) 788-6405*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2008*

*..... Esq.*

*Attorney for .....*